

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**CHARITY CHIDINMA
EMERONYE SWIFT,**

Plaintiff,

v.

**FRONTIER AIRLINES, INC.
(a Colorado corporation),
and JANE DOE,**

Defendants.

Civil Action No. 1:14-cv-1139

**Hon. Judge Anthony J. Trenga
Hon. Magistrate Judge Ivan D. Davis**

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE OF COURT
TO AMEND COMPLAINT**

Plaintiff Charity Chidinma Emeronye Swift ("Mrs. Swift"), through her undersigned counsel, proposes to substitute the Amended Complaint attached hereto as Exhibit 1 for her original Complaint in this case. Her reasons for amending her Complaint are as follows:

1. She did not file an Amended Complaint for more than twenty-one days after Frontier Airlines, Inc. ("Frontier") filed its Answer and Motion to Dismiss, because settlement negotiations were ongoing, and appeared promising at the time.
2. Her former counsel withdrew more than twenty-one days after Frontier Airlines, Inc. ("Frontier") filed its Answer and Motion to Dismiss.
3. She has discovered new facts and information that are included in the Amended Complaint, that have enabled her to better state her claims.

In *Sepmoree v. Bio-Medical Applications of Virginia, Inc.* Civil Action No. 2:14-cv-141

(E.D. Va., 2014), the Court stated:

If a motion to amend is filed more than twenty-one days after a responsive pleading or motion under Rule 12(b) is served, either leave of court or the consent of the opposing party is required. Fed R. Civ. P. 15(a)(2). The courts are instructed to “freely give leave when justice so requires.” *Id.* [Citing *Pueschel v. United States*, 369 F.3d 345, 353 n.3 (4th Cir. 2004)] Thus, leave to amend a pleading should only be denied when (1) the amendment will prejudice the defendant; (2) the moving party has acted in bad faith; or (3) the amendment would be futile. *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). An amendment would be futile if it fails to state a claim under the Federal Rules of Civil Procedure. *See Katle v. Penn Nat.Gaming, Inc.* 637 F.3d 462, 471 (4th Cir. 2011).

The attached Amended Complaint will in no way prejudice the defendants. Plaintiff has in no way acted in bad faith, but was unable to meet the 21-day deadline filing it (after Frontier’s Answer and Motion to Dismiss were filed) only because settlement negotiations seemed likely to resolve the case, and her former counsel withdrew their representation after the 21 days expired. Plaintiff believes that the attached Amended Complaint will not be futile, because she has alleged sufficient facts that meet the *Twombly* and *Iqbal* plausibility test. Finally, justice requires that Mrs. Swift be allowed to amend her complaint.

For the foregoing reasons, Plaintiff's Motion for Leave of Court to Amend Complaint should be granted.

Dated: December 10, 2014

Respectfully submitted,

/s/ Stephen Christopher Swift

Stephen Christopher Swift

Virginia State Bar ID No. 38419

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Attorney for Plaintiff

Charity Chidinma Emeronye Swift

CERTIFICATE OF SERVICE

I hereby certify that, on December 10, 2014, I electronically filed the foregoing document with the Clerk of the Court, using the Court's CM/ECF system, which will automatically cause all counsel of record to be served therewith.

/s/ Stephen Christopher Swift
Stephen Christopher Swift